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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 1069

IMPARATO STEVEDORING CORPORATION,

Petitioner,

—v.—

UNITED STATES LINES COMPANY,

Respondent.

REPLY BRIEF OF PETITIONER

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May 29, 1963

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The disingenuous arguments of respondent in its brief in opposition dictate a very short reply by the petitioner.

In its attempt to pervert the questions which are presented by the petitioner for a review by this Court the respondent concludes its view of the questions presented with its inquiring as to the stevedore's liability under hazardous working conditions "without taking any reasonable and effective steps to avoid injury to its own employees?" (Page 6 of respondent's brief.)

It disregards completely and has always disregarded the fact that the trier of the facts, in this case the Trial Court alone, has determined on the *evidence* that the petitioner acted reasonably under all of the circumstances in forming the bucket brigade and in handling the discharging operation as it did.

Recognizing the frailty of its position in this regard and the fact that the Court of Appeals overlooked com-

pletely this finding which is critical in cases of this type the respondent suggests at pages 9 and 10 of its brief that in order to prove that it acted reasonably the petitioner should have introduced testimony to that effect. We assume that the respondent means that an expert should have been called to testify that there was no way in which the cargo could have been discharged except in the manner in which the petitioner testified it was done. This Court, as recently as May 28, 1962, held that in a jury case expert testimony is not necessary if the primary facts can be accurately and intelligibly described to a jury and that the jury is as capable of drawing the correct conclusions as are witnesses possessed of special skill, etc. *Salem v. United States Lines Company*, 370 U. S. 31, 82 S. Ct. 1119. No expert testimony was needed in this case for the trier of the facts here, the Trial Court alone, to determine whether the petitioner acted reasonably. Indeed, that conclusion was solely for the trier of the facts and was not within the mouthings of any expert witness. It is interesting to note that the argument which is advanced in this case on the subject of the need for expert testimony is advanced by the very same party who advanced the same in the *Salem* case and by the very same attorneys who represented the very same respondent in the *Salem* case.

The respondent does not meet in any way the finding which is crucial in this matter, as made by the District Court and disregarded by the Court of Appeals, viz., the petitioner acted reasonably and discharged properly its warranty of workmanlike services.

The finding of the jury of the respondent's liability did not in any way conclude the issue of the petitioner's liability to the respondent. *Chicago City* v. *Robbins*, 2 Black 418; *Washington Gaslight Co.* v. *District of Columbia*, 161 U. S. 316, 16 S. Ct. 564.

In attempting in its brief in opposition to the petition to show that there is no conflict between this matter and *Italia Societa Per Azioni Di Navigazione* v. *Oregon Stevedoring Co., Inc.*, 310 F. 2d 481 (1962), cert. granted April 15, 1963, the respondent does not appreciate, or chooses to disregard, the thrust of the petition. Respondent says at page 7 of its brief that the petitioner has raised no place, not even in its petition to this Court, the question of the petitioner's negligence where it permitted its men to work in a dangerous place. Indeed, the petitioner raises that question in its petition and indicates that the District Court had found that the petitioner was not negligent and had acted reasonably in light of the conditions which it found. Thus, the Ninth Circuit in the *Italia* case requires negligence as a prerequisite to stevedore's liability and in this case the Second Circuit holds that negligence is not necessary and that automatic indemnity applies in the factual picture in this case.

It is respectfully submitted that for the reasons stated in the petition this Court should exercise its certiorari powers by granting the petition in order (a) to correct a manifest injustice and (b) to settle the law, important to the stevedoring industry. The importance of this question to the industry will be indicated to this Court by the motion of the National Association of Stevedores to file a brief as amicus herein.

Respectfully submitted,

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